IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3360 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SOMABHAI MULCHANDBHAI PATEL

Versus

DISTRICT REGISTRAR (CO-OPERATIVE SOCITIES)

Appearance:

1. Special Civil Application No. 3360 of 2002

MR DHIRENDRA MEHTA for Petitioner No. 1-7

Mr.M.R.Mengdey, Asst.GOVERNMENT PLEADER for Respondent No. 1

RULE SERVED BY DS for Respondent No. 2-3

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 07/05/2002

ORAL JUDGEMENT

Mr.M.R.Mengdey, Ld.Asst.Govt.Pleader appears for the respondent No.1. Respondent Nos 2 & 3 though served not appeared. With the consent of parties matter is

taken up for final hearing.

2. Mr.Mehta for the petitioners submits that the tribunal has rejected the appeal of the petitioners as per order dated 30.6.01 on the point of condonation of delay and he submits that though the petitioners had explained the delay the tribunal has not properly considered the same. Mr.Mehta submitted that there is a goods case on merits and therefore he submitted that if the appeal is not decided on merits the petitioners would suffer a lot.

3. At last, Mr.Mehta submitted that the petitioners are ready and willing to bear the costs if the matter is remanded to the tribunal for deciding the appeal on merits.

4. On behalf of the respondent authorities Mr.Mengdey has supported the order passed by the tribunal.

5. Considering over all facts and circumstances of the case, I am of the view that it can not be said that the delay is not properly explained by the petitioners, more particularly, because they were pursuing the correspondence with the District Registrar and in any event on 5.9.98 the Dist.Registrar has communicated to the petitioners that after the said letter the appeal has been preferred on 21.12.1998. Apart from that there is an arguable case on merits by the petitioners. Perusal of the order passed by the tribunal shows that the tribunal has not dealt with the grounds raised for explaining the delay but has only stated that the grounds are not clear and therefore there is no case for condoning the delay. The law on this point is already settled that normally lenient approach will be adopted by the courts for the purpose of condonation of delay more particularly because everybody should get opportunity of having the decision on merits.

6. Considering the above, I am of the view that the order passed by the tribunal dated 30.6.01 rejecting the appeal on the ground of delay is not proper and therefore same deserves to be quashed.

7. In the result, the order dated 30.6.01 passed by the tribunal is quashed with the clarification that the appeal shall be restored to file before the tribunal and the tribunal shall take up the appeal and decide the same on merits in accordance with law.

8. Rule is made absolute accordingly with no order as to costs.

7.5.2002 (JAYANT PATEL,J)